

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDDIE RENCHER, JR.,

Petitioner

v.

GARRETT, *et al.*,

Respondents

Case No.: 2:22-cv-00704-JAD-VCF

**Order Directing Petitioner to File
Application to Proceed *In Forma Pauperis***

Petitioner Eddie Rencher, Jr. has submitted a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254¹ without submitting an application to proceed *in forma pauperis*² or paying the filing fee. The court gives Rencher 30 days to either pay the \$5.00 filing fee or file an application to proceed *in forma pauperis* on this court's form, with a completed financial certificate and inmate account statements for the past six months. If Rencher fails to either pay the fee or submit the *in forma pauperis* application, the court will dismiss this action as improperly commenced.³

I also note that Rencher indicates on the face of his petition that it is second and successive to his earlier petition in *Rencher v. Williams, et al.*⁴ In March of 2017, United States District Judge Andrew Gordon denied that petition on its merits and denied a certificate of

¹ ECF No. 1-1.

² While Rencher submitted a motion for leave to appeal *in forma pauperis*, ECF No. 1-1, he is not seeking to file an appeal. He also did not file the required application to proceed *in forma pauperis* by an inmate under 28 U.S.C. § 1915 on the court's correct form, and he did not include the completed and signed financial certificate or inmate accounts for the past six months.


³ 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2.

⁴ 2:12-cv-01258 (D.Nev. March 31, 2017).

1 appealability.⁵ Rencher appealed, and the United States Court of Appeals for the Ninth Circuit
 2 denied a certificate of appealability.⁶ “Before a second or successive application . . . is filed in
 3 the district court, the applicant shall move in the appropriate court of appeals for an order
 4 authorizing the district court to consider the application.”⁷ If a petition has been dismissed with
 5 prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on
 6 the merits and renders a subsequent petition second or successive for purposes of § 2244(b).⁸
 7 Rencher indicates that he has not sought authorization by the Ninth Circuit.⁹ Thus this petition
 8 may also ultimately be subject to dismissal as second and successive.

9 IT IS THEREFORE ORDERED that Rencher has **until August 4, 2022**, to either pay the
 10 \$5.00 filing fee or file an application to proceed *in forma pauperis* on this court’s form, with a
 11 completed financial certificate and inmate account statements for the past six months. If he fails
 12 to either pay the filing fee or file an application to proceed *in forma pauperis*, the court will
 13 dismiss this case without prejudice.

14 IT IS FURTHER ORDERED that the Clerk of the Court is directed to retain the petition
 15 but not file it at this time.

16 
 17 U.S. District Judge Jennifer A. Dorsey
 18 July 4, 2022
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20 ⁵ *Id.* at ECF No. 63.

21 ⁶ *Id.* at ECF Nos. 65, 66.

22 ⁷ 28 U.S.C. § 2244(b)(3)(A).

23 ⁸ *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

⁹ ECF No. 1-1 at 2.